

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE: DEALER MANAGEMENT SYSTEMS
ANTITRUST LITIGATION

MDL No. 2817
Case No. 18 C 864

This Document Relates to:
Authenticom, Inc. v. CDK Global, LLC, et al.,
Case No. 18-CV-868 (N.D. Ill.)

Hon. Amy J. St. Eve

AUTHENTICOM’S NOTICE OF SUPPLEMENTAL AUTHORITY

Authenticom, Inc. (“Authenticom”) respectfully submits this notice of supplemental authority to draw the Court’s attention to Judge Dale S. Fischer’s order granting in part and denying in part Defendants’ motions to dismiss the First Amended Complaint in the *MVSC* case. That ruling (attached as Exhibit A) is not discussed in Authenticom’s brief in opposition to Defendants’ motions to dismiss in the *Authenticom* case, because it was issued after Authenticom’s opposition brief was filed. Authenticom wishes formally to invoke the ruling in support of its opposition to Defendants’ motions to dismiss its complaint.

Judge Fischer denied Defendants’ Rule 12(b)(6) motions with respect to the same horizontal conspiracy claim that Defendants seek to dismiss in *Authenticom*. *See* Ex. A at 7 (holding that MVSC’s First Amended Complaint plausibly alleged “CDK and Reynolds agreed and took affirmative steps to block MVSC’s access to dealer data . . . by seeking to *eliminate independent data integrators*”) (emphasis added); *compare id.* at 3-4 (summarizing MVSC’s allegations), *with Authenticom* Dkt. 1 at ¶¶ 132-148, 178-210 (Authenticom’s allegations).¹

¹ Judge Fischer also ruled that MVSC had plausibly alleged a second conspiracy – not raised in the *Authenticom* case – among CDK and Reynolds to prevent MVSC from participating in Defendants’ in-house data integration programs. *See* Ex. A at 3-4, 6-8. Judge Fischer granted Defendants’ motions to dismiss MVSC’s Section 2 monopolization claims, with leave to replead. Defendants’ renewed motions to dismiss the monopolization claims are pending with this Court.

Indeed, Kellogg Hansen amended the *MVSC* complaint based on the information it unearthed in the *Authenticom* case.

To maintain consistency in pretrial rulings in this MDL, Judge Fischer's ruling in *MVSC* should apply equally to *Authenticom*. *See, e.g.*, Manual for Complex Litigation (Fourth) § 20.131 (2004) (MDL consolidation meant to “avoid conflicting rulings”); *see also In re Pharmacy Benefit Managers Antitrust Litig.*, 582 F.3d 432, 440-41 (3d Cir. 2009) (transferor court's rulings are law of the case in the transferee court). Judge Fischer's decision thus provides an additional basis – in addition to the well-pleaded allegations and Chief Judge Peterson's factual findings in the *Authenticom* case itself – for denying Defendants' motions to dismiss *Authenticom*'s complaint. *See also Authenticom* Dkt. 216 at 19-21 n.2 (explaining that Chief Judge Peterson's findings that *Authenticom*'s *evidence* demonstrated a likelihood of success at the preliminary injunction stage necessarily means that *Authenticom*'s *pleadings* are sufficient to state a claim).

Dated: April 20, 2018

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Derek T. Ho, an attorney, hereby certify that on April 20, 2018, I caused a true and correct copy of the foregoing **AUTHENTICOM'S NOTICE OF SUPPLEMENTAL AUTHORITY** to be filed and served electronically via the court's CM/ECF system. Notice of this filing will be sent by e-mail to all parties by operation of the court's electronic filing system or by email to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court's CM/ECF System.



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